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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DAWSON, GLENN K

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/24/2003

35

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/264,464

Applicant(s)

BLACH ET AL.

Examiner

Glenn K Dawson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-19, 21-25, 27-33 and 37-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9, 21, 22, 38 and 39 is/are allowed.
- 6) ☒ Claim(s) 10, 11, 13-17, 19, 23-25, 27-33, 37 and 40-45 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17, 19 and 40 are<sup>46</sup> rejected under 35 U.S.C. 102(b) as being anticipated by Anderson-4995383.

Anderson discloses a support device having three components. Two side pieces with Velcro attachment regions, and a central component with Velcro for adjustable positioning between and releasably connecting to the side pieces.

Claims 24, 25, 27-33, 37 and 41-45<sup>48, 44, 50, 51</sup> are rejected under 35 U.S.C. 102(e) as being Anticipated by Raunig-5817039.

Raunig discloses a nasal support device 6 having an adhesive layer and a support layer. The medial portions of the device are longer than lateral portions in both the longitudinal and lateral directions. The top and bottom central projections constitute the claimed apexes, projections or centering means. The support member is tape 11.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10, 11, 13-16 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaudry-'918.

The earliest application from which applicant claims priority does not provide support for the material claimed in claim 10. Beaudry discloses a nasal dilator or a wound covering having an adhesive layer and a support layer. The device shown in fig. 7 is bilaterally symmetrical and has a central longitudinal region with longer dimensions

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than areas on either side of the central longitudinal axis. However, the specific size range is not disclosed. It would have been obvious to have made the nasal dilator at least 10cm long and 6cm. wide as nose sizes vary greatly; therefore, to have constructed the nasal dilator in this size range would have been obvious in order to provide a device useable on wider and larger noses.

***Allowable Subject Matter***

*and 52*  
Claims 1-9,21,22,38 and 39 are allowed.

*47*  
Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 08-20-03 have been fully considered but they are not persuasive.

The device of Anderson could easily be placed with parts of the side pieces on the nasal walls of a horse and the central portion extending therebetween. The span across the nose of horses varies with age and breed. Also, if necessary, end pieces of the central tape 1a could overlap the outer sections of each attachment region 1d,1e of each side piece thus making the overall length of the device shorter. As the size of human's also varies, the examiner considers the device of Anderson, as disclosed meets the broad claim limitations with regards to size.

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The splint of Gaunig is adhesively attached to the nasal walls, and since the device is made of aluminum the examiner contends that once adhered to the nose, the splint would act to restrict the amount of inward draw of the nasal walls.

The examiner disagrees with the applicant's contention that if one lengthened the dilator of Beaudry, that one would necessarily also proportion the rest of the device accordingly. In any event, the examiner contends that making a nasal dilator for a human in a length about 4 in. would be obvious since the width of people's noses vary. Given the fact that following surgery or use on a person with a medical condition making the nose unusually large, a larger length dilator would be desirable, it would have been obvious to make the Beaudry device longer to meet such a need.

To have made the dilator of Beaudry 2 in. wide would have been obvious because as shown in fig. 7, the flaps 80 are folded over during use to change the fulcrum points of dilating force. Therefore, the increase of the width to the flaps 80 would not affect the size of the device once placed on the nose. Additionally, the examiner also contends that again, given changes in size of human's noses, that making the effective width of the dilators 2 in. would have been obvious as it would tend to tailor itself to use on particularly long noses and would stay adhered to the nose longer given the larger adhesive surface area.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K Dawson whose telephone number is 703-308-4304. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Glenn K Dawson  
Primary Examiner  
Art Unit 3761

Gkd  
23 October 2003